

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CITY OF HUNTINGTON

Plaintiff,

v.

**AMERISOURCEBERGEN DRUG
CORPORATION, et al.,**

Defendants.

Civil Action No. 3:17-cv-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

**AMERISOURCEBERGEN DRUG
CORPORATION, et al.,**

Defendants.

Consolidated Case:

Civil Action No. 3:17-cv-01665

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO QUASH PLAINTIFFS'
AMENDED CROSS-NOTICE OF REMOTE DEPOSITION AND NON-RETAINED
EXPERT WITNESS DISCLOSURE OF DR. RAHUL GUPTA**

Plaintiffs the City of Huntington and Cabell County Commission (“Plaintiffs”) respond to Defendants’ Motion to Quash Plaintiffs’ Amended Cross-Notice of Remote Deposition and Non-Retained Expert Witness Disclosure of Dr. Rahul Gupta.

Defendants are incorrect in their assertion that the Court did not remand the severed claims against the Defendants other than ABDC, Cardinal Health, and McKesson to this Court. Quite simply, there is a case in this Court against the non-distributor defendants in which Plaintiffs can take discovery.

The operative complaint in this action is the Plaintiffs Corrected Joint and Third Amended Complaint filed on September 12, 2019 [Doc. 80].

On December 14, 2019, Plaintiffs moved to sever their claims all defendants other than the big three. Doc. 122. In the motion, Plaintiffs expressly “preserve[d] their claims and causes of

action against the severed defendants and seek to proceed against the same in a parallel track to CT1b.” *Id.* at 1, n1. On December 16, 2019, Judge Polster granted the motion. Doc. 123.

On January 6, 2020, Judge Polster filed a suggestion for remand with JPML. Doc. 129. The Panel subsequently entered a conditional remand order on January 14, 2020. Doc. 130. No party objected to the remand within the 7 day stay of the order, thus the order became effective upon it being filed with the Clerk for the United States District Court for the Northern District of Ohio on January 22, 2020. *Id.* The Plaintiffs’ cases were transferred from the Ohio Northern District to this Court on January 24, 2020. Doc. 131.

Upon remand, this Court has jurisdiction over the entire case inclusive of the severed and unsevered claims. *See* Polster Response to DEA Motion for Clarification, MDL Doc. 3263 at 3 (“After remand, the transferor court has exclusive jurisdiction, and further proceedings in the transferee court with respect to a remanded case are not authorized absent a new transfer order by the Panel.” (quoting Manual for Complex Litigation (Fourth) § 20.133 at 225)); *see also* Motion of Pharmacy Defendants of Clarification of Order Granting Motion to Sever of Plaintiffs Cabell County Commission and City af Huntington, MDL Doc. 243 at p.2 (“While 28 U.S.C. § 1407 may allow the Court to remand claims, it does not allow simultaneous litigation of the same claim in the same suit in different federal courts, nor does it allow splitting up of defendants for that purpose.”).

Pursuant to Special Master Wilkes Order in the WV MLP, a discovery deposition was held on September 17th and 18th and the evidentiary deposition was conducted on September 23rd and 24th. Any objection to the use of these depositions by any party at trial is premature. In any event, the moving Defendants are parties to both the proceedings before the WV MLP and the

proceedings pending in the MDL, where the depositions were also cross noticed, thus mooting the significance of any Order with respect to the moving Defendants.

Finally, as Plaintiffs indicated in the original notice, the parties cross-noticed in this civil action were the defendants other than the moving Defendants. The other defendants have not objected in this Court, and the moving Defendants lack any standing to object.

Plaintiffs request this Court deny Defendants' Motion to Quash Plaintiffs' Amended Cross-Notice of Remote Deposition and Non-Retained Expert Witness Disclosure of Dr. Rahul Gupta.

Dated: September 28, 2021,

Respectfully submitted,

THE CITY OF HUNTINGTON

/s/ Anne McGinness Kearse

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CERTIFICATE OF SERVICE

I certify that on September 28, 2021, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ *Anthony J. Majestro*